Special Issue on Security

Extra: **A Chief Inquisitor Begins to Have His Doubts About the Witch-Hunt, See Page 3**

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Justice and "Security" Cannot Be Reconciled

In the growing uproar over the loyalty-security program, its critics still cling to a comfortable fallacy. They assume that it is possible to reconcile "security" with justice. They speak as if, by some reform of the rules, or better adherence to them, maximum security for the government and fair trial for the individual can even-handedly be assured. Thus Mr. Walter Lippmann, in criticizing the President's clumsiness in the Ladejinsky case, asserts the citizen's right in such matters "to have the charge tried by due process" without stopping to consider whether due process is possible in such proceedings. How do you try the "charge" that a man once worked for Amtorg or has two sisters in Russia?

If we stop to compare what happens in the trial of a crime with what happens in the trial of a loyalty-security case, we will begin to see that a more fundamental attack on the problem is necessary if the miasma of suspicion is to be dissipated. Here are some of the differences:

1. The matter of proof. A trial deals with something that happened. A loyalty-security hearing deals with something that *might* happen. When a crime has been committed or attempted, objective proof is possible: a body, a cracked safe, a forged check, witnesses, may all be put in evidence.

But when a man is up on loyalty or security charges, nothing has *happened*. The tribunal is not dealing with an act but with future possibilities. It is engaged in an exercise in clairvoyance. It must determine whether a man *might* commit a crime some time in the future, whether he *might* steal or sell secrets. There are no ways to prove what a man *might* do. The essence of the loyalty-security procedure is not the trial of a fact but a guess as to future conduct.

2. How any doubt is resolved: In the trial of a crime, even for the most heinous, such as murder or treason, any reasonable doubt is resolved in favor of the accused. As Blackstone phrased the rule, already venerable in his time, "The law holds that it is better that ten guilty persons escape than that one innocent suffer." Law enforcement is thereby made more difficult. But justice to the individual, not the security of society, is the primary concern.

All this is reversed in loyalty-security cases. To bar a man from a job and label him disloyal because in your opinion he might do something bad in the future is by its nature a decision which resolves the doubt in favor of the State and against the individual. "Security" means to take as few chances as possible, even at the expense of injustice to some people who never have committed a crime and never will.

This is vividly illustrated by Fifth amendment cases. A man summoned before a magistrate and asked whether he had ever committed larceny who thereupon pleaded the Fifth amendment could not be thrown in jail or even prosecuted. But a worker in the government or at General Electric or Bethlehem Steel who invokes the Fifth amendment loses his job. No evidence that he ever committed a crime or was ever a radical—the two are equated by now in the public mind—is required. The invocation of his constitutional right is enough to ruin his reputation and his right to work.

Those who defend these standards fall back on a totalitarian logic. David Lawrence protested recently against what he terms a "Left-wing drive" to "surround governmental employes with complex procedural safeguards which would supersede the right of the American government to protect its own safety." Mr. Lawrence forgets that much of the Constitution and the common law is devoted to surrounding people of all kinds, including the disreputable, with complex procedural safeguards which supersede the right of government to protect itself. In such restrictions lies the essence of free government.

3. Avoidance: The difference in the two procedures becomes clearer if you ask yourself how you avoid getting into trouble. To avoid arrest and trial for a crime, one has to obey the law. But what does one avoid to keep out of loyalty-security trouble? One has to avoid political activity. Since you never know what organization may some day be regarded as suspect, better join none. Since almost any cause may some day be regarded as subversive, better keep away from all. Since there are now informers everywhere, including the campus, say as little as possible, avoid the discussion of dangerous subjects. Be careful what books you have in your library and what publications you read. These may be held against you. *Safety lies in the abnegation of one's rights.*

4. Standards: Here, too, the difference becomes sharp. There is little doubt as to what is murder, larceny, or espionage. These are defined in the law books.

But what is "subversion" or "Un-Americanism?" The latter is an epithet, the former is a wholly relative term. Much that we take for granted today seemed un-American and subversive a century ago—income taxes for example. Much that existed then would seem "un-American" today—for example, the earlier restriction which limited the right to vote to those citizens who owned property. What one man sees as subversion another man sees as progress.

5. The mode of defense: In a criminal trial, the accused is furnished with a bill of particulars. It informs him that the government will allege that a safe was cracked at such and such an address in such and such a city at such and such a time. The accused may then prove he was elsewhere.

But anything remotely approaching a bill of particulars is rare in loyalty-security cases. The accused is usually asked

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As the Danger of War Recedes, the Hobgoblins and H'ants Grow Fainter . . .

The direction of events is enormously encouraging. The President's affirmative attitude at press conference toward a cease-fire in Formosa* and UN Secretary Hammarskjold's assurance on his visit here that he would win the release of the American flyers if restraint were exercised indicate that elements of agreement already exist. The Administration seems prepared for its part to let the Tachen and other offshore islands go. The opening of negotiations for a cease-fire *before* ratification of the mutual security agreement with Chiang provides important leverage both at Taipeh and Peking.

Peace in the straits would be the end of Chiang; nostalgia, disaffection and obsolescence would gradually overcome Chiang's forces from within. Peace would also snuff out the most obnoxious lobby ever to hold the American government in thrall. The Eisenhower Administration clearly feels strong enough to risk a showdown with the China Lobby, Knowland and the Republican extremists. The larger dimensions of its thinking are visible in Defense Secretary Wilson's plea for increased trade with the Soviet bloc—as a means of creating good-will. Peace is really breaking out.

Humanity being the same everywhere (how often in history it has been dreadfully radical and daring to suggest that maybe *They* are really just like *Us!*), there are evidences on both sides that the thaw is freeing men's minds. First in literature and then in science, Soviet intellectuals during recent days have begun to sound off against dogmatism and xenophobia and their own brand of witch-hunting. The evidence of new and similar trends on our side have been accumulating at a rate which suggests we are slowly picking up momentum in the move back toward less repressive attitudes. With relaxation of world tension, the hobgoblins may evaporate.

Certainly a week in which Mrs. Annie Lee Moss was reinstated in her job, Martin Dies refused a place on the House Un-American Activities Committee, the new indictment against Owen Lattimore dismissed and McCarthy twice ordered to take his seat and shut up is a week which must give heart to all who hope for an abatement of the witch hunt. In the hope of helping the tide along we are devoting this week's number to a fundamental discussion of the issues on pages one and four, and call attention to some useful ammunition on pages two and three: the attack on Brownell under the aegis of the U.S. Chamber of Commerce, the wholly unexpected speech by former Senator Cain, the UAW-CIO resolution in the Lupa case and a Canadian psychiatrist's reflections on the unreliability of intelligence agents.

Secretary Wilson's action in restoring Mrs. Annie Lee Moss to her job was a blow not only at McCarthy but at J. Edgar Hoover, for it rejects as unreliable the evidence of a professional FBI undercover agent, Mrs. Markward. The House Democratic leadership, by refusing Martin Dies a place on the House Un-American Activities Committee, showed its own resistance to the witch hunt. The moderate conservative, Walter, who wanted to abolish the committee altogether, will have a free hand as chairman to run the committee his way.

Judge Youngdahl's forceful decision dismissing the new indictment against Owen Lattimore is *sui generis*—the expression of unusual courage and integrity on the bench. But it must help to clear away the fog by bringing justice nearer for a scholar who has become a symbol and by the reasoning of the decision itself. For in denying that charges of adherence to Communist party line are specific enough to be the basis of prosecution for perjury, the decision strikes at the basic tendency of recent years to set up an anti-Communist standard of American orthodoxy and to punish those who deviate from it. Lattimore's agony is not yet over, but a long stride forward to his ultimate victory has been taken.

Among the politicians, there is beginning almost a bandwagon rush to exploit growing popular revulsion against snoopery. Kuchel, no less, of California, who voted against censuring McCarthy last session, rose in the Senate January 14 to warn that Congressional investigations must not be allowed to "degenerate into witch hunts or inquisitions . . . into forums for character assassins . . ." Shortly afterward when his one-time idol, McCarthy, was twice ordered to take his seat, Kuchel commended the chair for its ruling. Poor Joe was only saying that the Senate's unanimous vote for the Daniel resolution against Communism as sin could not be taken at face value, which is true. Joe is in a bad way when a Kuchel can turn on him.

Not one but several investigations of the witch hunt itself may be in the cards. Humphrey of Minnesota, who played such a cowardly role last August, has dashed in with a clumsy proposal. He would set up a 12-man Commission to investigate the loyalty-security program but allow the Republicans to pick eight of the twelve (four by the White House, four by Nixon). This explains why after a week of canvassing he could get only Stennis of Mississippi to cosponsor his resolution. The Senate Democrats are staking their cards on "Cotton Ed" Johnston who has opened his own investigation as chairman of the Civil Service Committee by rubbing McCarthy's nose in his old charges about the State Department. The time has come for a successful fight-back.

* For the background and origins of the idea see the Weekly for last September 27, "Rallying Point: A Cease-Fire for Formosa."

Criticism of Brownell From An Unexpected Source

We don't know whether it's a trend or just an accident but *Nation's Business*, organ of the U.S. Chamber of Commerce, carries an article sharply critical of Brownell.

The January, 1955, issue, a "Midterm Report" by the President's Cabinet, contains articles by each member of the Cabinet, followed by an independent appraisal of that Cabinet member's record.

The appraisal which follows Brownell's is by Jefferson B. Fordham, dean of the University of Pennsylvania Law School. The article, "Security Quest Threatens Freedom," is useful ammunition for civil libertarians.

Dr. Fordham writes, "Faith in reason and the free interplay of ideas is being shaken by an approach to the problem of national security, which is at once negative and authoritarian." He says "the Department of Justice has not been spared the psychological virus of negativism and conformity."

Dr. Fordham criticized the Attorney General for asking authority to tap wires in security cases, including "sedition, although it is concerned with political thought and expression and presents great hazards to freedom of the mind and free speech."

Dr. Fordham blames the loyalty program for permitting "discharge for opinions expressed under outdated conditions and now deemed indications of bad judgment" and for "the individual insecurity which is created by the jeopardy of multiple investigations."

The parting shot: Dr. Fordham finds it "understandable that an Attorney General with a reputation as an able political strategist would have difficulty keeping himself aloof from partisan politics" but thinks Brownell "should not use his office for partisan purposes."

"Mr. Brownell made a great mistake in this respect by his use of FBI material relating to Harry Dexter White for patently partisan purposes. One does not need dilate on the truly horrendous implications of political exploitation of an agency such as the FBI. The White episode should serve as a wholesome warning."

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. . . And A Chief Inquisitor Begins to Have His Doubts About The Witch Hunt

If Cardinal Spellman had suddenly questioned Papal Infallibility*, or Krushchev wondered aloud whether Lenin might not have been all wrong, it would have been no stranger than the speech made at Spokane, Washington, January 15, by former Senator Harry P. Cain, "Can Freedom Live With Internal Security?" Though Cain is a member of the Subversive Activities Control Board, principal arm of our secular Inquisition and was talking to Republicans, the answer he suggested was that maybe freedom was *not* compatible with "internal security."

Though the press outside of the two Washingtons, the State and the District, paid little attention to the speech, its source gave it unusual weight. In the Senate from 1946 to 1952 when he was defeated for reelection, Cain was most closely allied with McCarthy, McCarran and Dirksen. He distinguished himself chiefly by demanding the deportation of Charlie Chaplin in 1949 and paying a cordial visit to Franco.

Cain remains a man of the right, but a man who has been doing some thinking. In this speech he takes a look at the various laws and agencies which now deal with internal security and asks, "With the exception of wire-tapping authority, would you establish much more were you an autocratic ruler in our land?" Cain says the average Russian citizen "lives in dread of the absolute surveillance and the unrelenting control of his conduct" but warns that our own internal security system could "snuff out the lights of learning while making cowards and mental robots of free men and women."

Cain took a dour view of the security system as applied to Federal employes. He observed of security officers, "Any misfits or second-raters among them are more dangerous to our future than the subversives they endeavor to catch." He said "the nation's need is for security personnel who can tell the difference between disloyalty and non-conformity, between treason and heresy." He declared, "There is every reason to encourage the iconoclast as well as the conformist to serve the Republic."

But what government official will dare hire non-conformists when some McCarthy may breathe down his neck? Cain is prepared to see this, too. Why, he asked ironically, take an applicant who "has been a member of organizations alleged to be subversive" though "these organizations may not be subversive or perhaps they weren't before they went out of business years ago?" Cain added wryly, "No one is likely to encounter any future trouble by shelving a troublesome looking application."

* As, indeed, His Eminence may if the Pope doesn't stop talking about co-existence.

Blackmail by Government

"To what extent is the FBI recruiting informers among persons immediately threatened with economic and social ruin by being charged as security risks, on the implied or actual promise of immunity and protection? Does the system positively encourage malicious and false reports by extending an unwarranted and universal guarantee of privacy [by denying accused persons the right to confront their accusers]?"

—Resolution by the UAW-CIO executive board January 11, protesting the security suspension of John Lupa, a machinist of the Chrysler Arsenal in Detroit.

Cain's solution in security cases is to change the rule and provide for no dismissals "unless it is affirmatively found that his [the employe's] retention of employment is reasonably inconsistent with the National interest." This would put the burden of proof on the government—but require a lot more backbone from department heads. (The speech may be read in the Congressional Record of January 18.)

Cain's anxieties are welcome, his warnings salutary, but his proposals are inadequate. He thinks "a whole clique of spies" could hardly do as much damage as "our failure as a government to have confidence in our own people." But the Board on which he sits, as established by the McCarran Internal Security Act, reflects little such confidence. The Board's job is to play ideological nursemaid and flatfoot to the American people by registering radicals and labelling their writings—as if administering a Pure Politics and Ideas Act. Cain is not yet ready to see that freedom is indivisible and inseparable from risk.

Yet out of context or in, there is much in the speech that would once have been enough to get a Left intellectual hauled before the House Un-American Activities Committee. Reporters casting about for some explanation recalled that Cain was originally a Democrat, that he protested the treatment of the Japanese on the Coast during the war, that he defended Anna Rosenberg and that the political pendulum in his home State of Washington has been swinging steadily Left. Its own McCarthy, Canwell, was defeated for Congressman-at-Large by Don Magnuson again last Fall. In 1954 Canwell lost by 10,000 votes out of more than 1,000,000 cast; last Fall he lost by 121,000.

Whatever the causation (and who can read a man's mind?), Cain deserved a salute from left-of-centre. It took courage for a man in his position, with his political ties, to make that speech. It seemed another indication of a changing tide.

The Most Unreliable of All Are The Security Police Themselves

One of England's most distinguished reviews, *The Twentieth Century*, published an article on "Science and Secrecy" last October by Humphrey Osmond, who occupies a rather advantageous post for the observation of the U.S. security mania, since he is not only a Canadian but superintendent of the Saskatchewan Mental Hospital. One passage deserves wider circulation, since it illustrates the ancient problem—*quis custodes custodiet?* or who will watch the watchman? Dr. Osmond points out that "the excitement and uncertainty of espionage attracts peculiar and unreliable people:

"Admiral Canaris, head of German Naval Intelligence, is said to have worked for the British, though the evidence is not completely satisfactory. Beria, according to his colleagues, was for many years an agent of capitalism while heading his country's secret police; however dubious we may be about these accusations, it is certain that Petrov, one of his men, gave away many important secrets . . .

"Recently Dr. John, head of the West German Intelligence Services, fled to the Eastern Zone. One of the most interesting accounts we have is that of Colonel Redl, for years before 1914 Chief of the Austrian Intelligence Services. He was well-known as a spy-hunter, but himself a Russian spy.

"Besides, it is not only deliberate treachery from secret service men that we must guard against, but also zealous stupidity. It has been shown in an analysis of the Oppenheimer enquiry that, in an effort to justify the committee's action in suspending Dr. Oppenheimer, much highly secret information was published. The energetic Admiral Strauss and the U.S. intelligence services presented their Russian counterparts with information that would have cost many millions of dollars to obtain by normal means.

"It may be felt that these are special instances, but it seems that . . . treachery is an occupational disease in spy services much more than among scientists."

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No Freedom Without Risk, No Stability Without Trust

(*Continued from Page One*)

to rebut vague charges of Communist sympathy or association. The task of the defense is to prove a negative.

Even where particulars are furnished, the outcome is not necessarily conclusive. A man may indeed "clear" himself by proving that he never engaged in liberal or left-wing activity of any kind. But what if he did belong to a radical organization? Does that mean that he is a security risk?

The only espionage case turned up in the whole security program is one which would never be suspected by normal "loyalty" standards. Joseph Petersen had no Left-wing connections. A Catholic, graduated from a Catholic school, he never belonged to any organization on the Attorney General's or any similar "list." Whatever this code expert did was for a friendly power, Holland, and for no ideological reasons. He could slip easily through the sieve of customary loyalty standards.

On the other hand a Ladejinsky, for all his demonstrated value as an agricultural expert, could never hope to qualify under them for government employment if he were a new applicant. A man who had once worked for Amtorg, with two sisters in Russia, whose name had been on the mailing list of several "front" organizations during the war would never be freshly hired today. The liberals would never dare defend him. The Ladejinsky case shows the advantage of judging a man by what he *does* when employed, by the record he makes rather than by a system based on paranoid surmise.

6. Witnesses: The difficulty is made the greater by the mode of presenting evidence. In a criminal trial, the accusing witness must be produced in court and subjected to cross-examination. The right to confront one's accuser is fundamental. The government may use informers, as in narcotic or smuggling cases, but it cannot come into court and ask for conviction on undisclosed evidence by undisclosed persons on the ground that to reveal them would endanger its sources of information. The conviction can be obtained only on the basis of whatever evidence and witnesses the government produces in open court.

But in loyalty-security cases nothing is more familiar than the submission of allegations from undisclosed informers. The accused has no chance to confront the accuser. Such confrontations in criminal cases often disclose mistaken identity. Cross examination may uncover perjury. All these safeguards are absent in loyalty-security cases because here again the security of the state, its secrets and informers, is ranked ahead of justice to the individual.

The anxiety over security reflects its widening impact on our society. As more people are drawn into its orbit, more become aware of its injustices. The government is having trouble; the loyalty program, designed originally to purge the government of liberals and radicals, has ended by making people of all kinds afraid to take government jobs. Something has to be done, and the politicians scent popularity in the issue. But they, like all of us, take the line of least resistance, and talk only of correcting the "abuses" of the security program.

Few will dare to say it now, but the time is coming when the truth will be recognized, a truth which the Framers of our Constitution wove into the fabric of American government. They saw that there could not be freedom without risk, that no stable society could be built except on a foundation of trust, and that when trust was violated—and only then—could a man be punished. They did not think it was the province of government to police men's minds, nor that it had a right to punish them unless they committed some wrongful act. They would have been horrified at our growing system of thought police, of guessing game "law" about prospective crime, and indeed most of all by our obsession with "security."

An administrative official has a right and duty to judge the reliability of a man he hires. But what is proper and necessary in private administrative judgment is improper when erected into a system of universal surveillance and public defamation of character that chokes off free political discussion in ever wider areas and brands men as "disloyal" or "security risks" on the basis of pseudo-judicial guessing as to whether they might possibly some day commit a crime. The loyalty-security program cannot be reformed. Given peace, it will eventually be abolished.

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